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June 29, 2018

Via Electronic Filing and E-mail

F. David Butler, Esq.
Hearing Officer
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29211
David.Butler@psc.sc.gov

**Re: Annual Review of Base Rates for Fuel Costs for South Carolina Electric
Gas Company; Docket No. 2018-2-E
Appellate Case No. 2018-001165**

Dear Mr. Butler:

Thank you for your email clarifying that the Public Service Commission of South Carolina will issue a more full and complete order on rehearing and reconsideration in the 2018 Annual Review of Base Rates for Fuel Costs for South Carolina Electric & Gas Company ("SCE&G"), Commission Docket No. 2018-2-E. We thought it would be helpful to share our clients' position on the timing of the notice of appeal and flag this as a procedural issue that may be worth bringing to the attention of the Commission for future proceedings.

South Carolina Appellate Court Rule 203 requires that all notices of appeal from administrative tribunals must be served within thirty days of receipt of the decision granting or denying any timely petition for rehearing. S.C. App. Ct. R. 203(b)(6). The only instance where this deadline can be extended is where "*a decision indicates* that a more full and complete decision is to follow." *Id.* (emphasis added). In that case, a party "*need not* appeal until receipt of the more complete decision[.]" *Id.* (emphasis added).

Because the May 23 directive in this proceeding did not expressly indicate that a more full and complete decision would follow, Conservation Groups filed their notice of appeal within thirty days from that directive, in order to fully protect their right to appeal.¹ Significantly, the requirement of service of the notice of appeal is jurisdictional. If a party misses the deadline, the appellate court "has no authority or discretion to rescue the delinquent party by extending or ignoring the deadline for service of the notice."

¹ The Conservation Groups appreciate the email clarification regarding the more full and complete order, but note that Appellate Court Rule 203 specifically references the administrative tribunal's "decision." To protect their right to appeal, Conservation Groups relied specifically on the language in the Commission's decision (the directive).

Elam v. S.C. Dep't of Transp., 361 S.C. 9, 14–15, 602 S.E.2d 772, 775 (2004) (citations omitted). This heightens the importance of a timely filed notice of appeal.

Appellate Rule 203 includes language permitting an earlier filing (the parties “*need not* appeal until receipt of the more complete decision”). However, it would still be helpful for parties considering appeal and those responding to such an appeal if the Commission were to provide a clear signal in future directives addressing petitions for rehearing or reconsideration when a more full and complete order is forthcoming. The following phrasing would mirror the language that tolls the appeal deadline in Appellate Rule 203: “A more full and complete order will follow this directive.”

Although it may be possible to infer from the Commission’s directives when a more full and complete order is forthcoming (as suggested by SCE&G in this proceeding), relying on this inference puts the appealing party at risk of an adverse interpretation on appeal. If a directive is misconstrued and the appellate deadline missed, the consequences are severe for the party wishing to appeal.

By copy of this letter, we are serving other parties of record. Thank you for your time and consideration of this matter.

Respectfully submitted this 29th day of June, 2018.

s/ J. Blanding Holman, IV
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Attorneys for Conservation Groups

STATE OF SOUTH CAROLINA
BEFORE THE PUBLIC SERVICE COMMISSION

DOCKET NO. 2018-2-E

In the Matter of:)	
)	
)	CERTIFICATE OF SERVICE
Annual Review of Base Rates for)	
Fuel Costs for South Carolina)	
Electric & Gas Company)	
)	

I hereby certify that the following persons have been served with this letter by electronic mail and/or U.S. First Class Mail at the addresses set forth below:

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This 29th day of June, 2018.
s/ A. Rachel Pruzin